

1 plaintiffs' long-distance accounts receivables.<sup>9</sup> At all times  
2 before, during and after the creation/compilation of the TBR/lump  
3 sums, Pacific owns the legal right to every penny -- for both  
4 local and long-distance services -- of which the TBR/lump sum  
5 amounts are comprised. Thus, the plaintiffs' argument that any  
6 component of the TBR/lump sum still belongs to them in spite of  
7 their conveyance for value to Pacific is utterly illogical.<sup>10</sup>

8       Indeed, an irony is that the long distance plaintiffs very  
9 much want Pacific to own the long distance accounts receivables.  
10 Conveying such ownership to Pacific, in effect, puts teeth into  
11 the enforceability of the long distance carriers' legal right to  
12 be paid. This is because Pacific alone has both the  
13 technological and legal power to suspend, cancel or modify all  
14 telephone service -- long distance and local -- for traffic on  
15 Pacific's telecommunications network. Thus, conveying ownership  
16 of the long-distance receivables to Pacific -- before the  
17 customer bills with the TBR/lump sum compilations are mailed by  
18 Pacific -- is a means of promoting customer payment for long-  
19 distance as well as local charges [See Exhibit C at paragraph 9].

---

20       <sup>9</sup> See Exhibit C at pages 5-6, paragraph 9 [Elizondo  
21 Declaration].

22       <sup>10</sup> In their earlier TRO reply motion papers, the plaintiffs  
23 made much of the circumstance that a "true up" or "evening-up"  
24 process occurs which saves Pacific from any ultimate loss on the  
25 long distance receivables. Apparently, plaintiffs' intended to  
26 thereby imply that Pacific's purchase of the receivables is  
27 somehow less important. But the "true up" process -- itself the  
28 product of interrelated, negotiated, contract provisions -- does  
not effect a reconveyance or other change of ownership of the  
receivables. Plaintiffs cannot point to anything to the  
contrary. The receivables remain Pacific's legal property at  
all times -- with the attendant features of ownership.

1 F. PLAINTIFFS' ASSERTIONS OF IRREPARABLE INJURY ALSO  
2 ARISE FROM THEIR GRATUITOUS CLAIM OF OWNERSHIP OF THE  
3 PROPRIETARY CUSTOMER DATA AND THE FRIVOLOUS POSITION  
4 THAT PACIFIC HAS IMPLIED THAT THE PLAINTIFFS ENDORSE  
5 THE AWARDS PROGRAM

6 The plaintiffs assertions that they are being irreparably  
7 harmed show no harm whatever. Purportedly, according to the  
8 plaintiffs:

9 (i) Every time a customer enrolls in the Awards program,  
10 Pacific wrongfully appropriates the plaintiffs' proprietary  
11 information (Plaintiffs' Opening Brief at p. 9 (lines 20-25)).  
12 Such appropriation allows for "wrongful" solicitations of  
13 customers (Id. at p. 10 (line 5), divests the information of its  
14 confidentiality (Id. at p. 12 (lines 11-14), and deprives the  
15 plaintiffs of exclusive use of the information (Id. at p. 12  
16 (lines 24-25); and

17 (ii) The "plaintiffs' reputations and goodwill will be  
18 irreversibly tarnished" because, according to the plaintiffs'  
19 byzantine reasoning: (a) Pacific implies that the plaintiffs  
20 endorse the awards program; (b) whereas the awards program will  
21 be adjudicated in this case to be unlawful; (c) which will  
22 invalidate any awards to customers; (d) with the result that the  
23 customers will impute Pacific's allegedly "unlawful and deceptive  
24 practices" to the plaintiffs. (Id. at p. 14 (lines 16-23).

25 But, again, the plaintiffs' claims of irreparable harm --  
26 like their assertions of expecting to prevail on the merits --  
27 are based on their ever-pervasive presumption that the billing  
28 information being used by Pacific and being released by customer  
29 consent is proprietary to the plaintiffs. As shown, supra at

1 pages 8-11, the information is proprietary to telephone customers  
2 under the 1996 Telecommunications Act.

3       Moreover, AT&T's, Sprint's and MCI's angst over Pacific's  
4 advertising seems feigned. Pacific's advertising nowhere states  
5 that any of the plaintiffs endorse Pacific's awards program.  
6 None of the plaintiffs' names are mentioned in the advertising;  
7 and just why it should be assumed that telephone customers will  
8 be devoting lots of time to thinking about whether AT&T, Sprint  
9 and MCI endorse Pacific's awards program is unexplained.  
10 Like a house of cards, the plaintiffs' artificial claims of  
11 "irreparable harm" must collapse, since they are without a  
12 factual foundation.

13

14 IV. CONCLUSION

15       The plaintiffs' good faith in continuing to pursue  
16 emergency relief is questionable, given that they now reasonably  
17 should know Pacific is not engaged in the behavior of which it  
18 was accused when the plaintiffs ran off seeking TRO's and  
19 emergency discovery. When the plaintiffs asked for TRO's, they  
20 speculated at great length that Pacific was using the plaintiffs'  
21 separate, long-distance charges in the Awards program, and then  
22 transferring that separable information to Pacific Bell  
23 Communications, the plaintiffs' prospective competitor. See AT&T  
24 and MCI's Memorandum of Points and Authorities in Support of  
25 Application for Temporary Restraining Order, at page 6 (lines 8-  
26 15). Even though they now know, through Pacific's opposition to  
27 their application for TRO, that Pacific was only using the

28

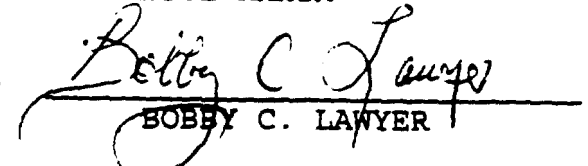
1 TBR/lump sum, the plaintiffs continue to pursue emergency relief.  
2 The plaintiffs are wrong and they know it. Their  
3 preliminary injunction application, like their complaints, is  
4 baseless. For the foregoing reasons, the plaintiffs' preliminary  
5 injunction application should be denied.  
6  
7

8 June 18, 1996  
9

10 Respectfully submitted,

11 PACIFIC TELESIS LEGAL GROUP  
12 BOBBY C. LAWYER  
13 WALID S. ABDUL-RAHIM

14 By:

  
BOBBY C. LAWYER

15 Attorneys for Defendants  
16 PACIFIC BELL, PACIFIC TELESIS  
17 GROUP, PACIFIC BELL EXTRAS and  
18 PACIFIC BELL COMMUNICATIONS  
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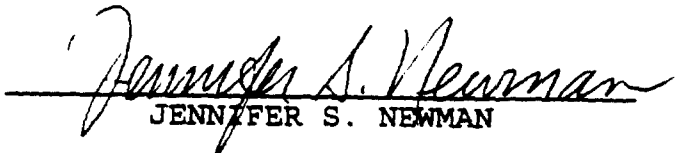


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6 GEORGE S. DUESDIEKER  
7 DARREN S. WEINGARD  
8 SPRINT LAW DEPARTMENT  
9 1850 Gateway Drive, 4th Floor  
10 San Mateo, CA 94404-2467

11 I declare under penalty of perjury under the laws of  
12 the United States of America that the foregoing is true and  
13 correct.

14 DATED: June 18, 1996

15   
16 JENNIFER S. NEWMAN

1 PACIFIC TELESIS LEGAL GROUP  
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2 WALID S. ABDUL-RAHIM (141940)  
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5 Attorneys for Defendants  
PACIFIC BELL, PACIFIC TELESIS GROUP,  
6 PACIFIC BELL EXTRAS and  
PACIFIC BELL COMMUNICATIONS  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION  
10

11 AT&T COMMUNICATIONS OF	)	<u>CONSOLIDATED ACTION</u>
CALIFORNIA, INC., et al.,	)	
12 Plaintiffs,	)	CASE NO. C 96-1691 SBA
13 vs.	)	DECLARATION OF WALID ABDUL-RAHIM
14 PACIFIC BELL, et al.,	)	IN SUPPORT OF DEFENDANTS'
15 Defendants.	)	OPPOSITION TO PLAINTIFFS'
	)	APPLICATION FOR PRELIMINARY
	)	<u>INJUNCTION</u>
<hr/>		
16	DATE:	JULY 2, 1996
17	TIME:	2:00 P.M.
18	PLACE:	COURTROOM 3
19		[HON. SAUNDRA
20		BROWN ARMSTRONG]

21 I, Walid Abdul-Rahim, declare,

22 1. I am an attorney with Pacific Telesis Legal Group,  
23 attorneys of records for Defendants in this matter. I have  
24 personal knowledge of the matters stated herein and could testify  
25 thereto if called as a witness.

26 2. Attached hereto as Exhibit A is a true and correct  
27 copy of the Court's Order Denying Application for Temporary  
28

1 Restraining Order and Setting Briefing Schedule for Preliminary  
2 Injunction, filed May 15, 1996.

3

4           3. Attached hereto as Exhibit B is a true and correct  
5 copy of the Court's Order Denying Plaintiffs' Expedited Motion  
6 for Discovery, filed May 28, 1996.

7

8           4. Attached hereto as Exhibit C is a true and correct  
9 copy of the Declaration of Lynne Elizondo In Support of  
10 Defendants Pacific Bell, Pacific Telesis Group, Pacific Bell  
11 Extras and Pacific Bell Communications' Opposition to AT&T's,  
12 MCI's, and Sprint's Application for a Temporary Restraining  
13 Order, executed and filed on May 10, 1996.

14

15           5. Attached hereto as Exhibit D is a true and correct  
16 copy of the Declaration of Jan Hewitt In Support of Defendants'  
17 (Pacific Bell, et al.) Opposition to AT&T's and MCI's Application  
18 for a Temporary Restraining Order, executed and filed on May 10,  
19 1996.

20

21

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28 ///



1           6. Attached hereto as Exhibit E is a true and correct  
2 copy of the text of 47 U.S.C. Section 222, the 1996  
3 Telecommunications Act.  
4

5           I declare under penalty of perjury under the laws of  
6 the United States of America that the foregoing is true and  
7 correct.  
8

9 DATE: JUNE 18, 1996  
10

  
Walid Abdul-Rahim

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FILED

MAY 15 1996

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AT&T COMMUNICATIONS, et al.,	)	No. C 96-1691 SBA
	)	
Plaintiffs,	)	<u>ORDER DENYING</u>
	)	<u>APPLICATION FOR</u>
vs.	)	<u>TEMPORARY</u>
	)	<u>RESTRAINING ORDER</u>
PACIFIC BELL, et al.,	)	<u>AND SETTING BRIEFING</u>
	)	<u>SCHEDULE FOR</u>
Defendants.	)	<u>PRELIMINARY</u>
	)	<u>INJUNCTION</u>

Plaintiffs have filed an application for Temporary Restraining Order ("TRO") and request for an order to show cause regarding a preliminary injunction.

Federal Rule of Civil Procedure 65(b) provides the district court with the authority to enter a TRO. The Court may grant such injunctive relief where the movant demonstrates either "(1) a likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of serious questions going to the merits and the balance of hardships tipping in [its] favor." Gilder v. PGA Tour, Inc., 936 F.2d 417, 422 (9th Cir. 1991).

The Court has considered the papers submitted in connection with this TRO request, including an opposition by the defendants, and plaintiffs' reply. The Court finds that plaintiffs have not demonstrated that the extraordinary remedy of a TRO is warranted. The Court finds that while plaintiffs

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JH

EXHIBIT A

1 have demonstrated that defendants' conduct may subject them to  
2 some injury, they have not demonstrated that the injury is  
3 imminent or presently occurring. Plaintiffs' arguments focus  
4 on their belief that defendants intend to provide information  
5 to an affiliate of defendants who will, in the future, be  
6 competing with plaintiffs. Plaintiffs have not, however, made  
7 any showing that this conduct is imminent. Nor have  
8 plaintiffs made an adequate showing that the alleged injuries  
9 are irreparable.

10 Further, plaintiffs have not demonstrated a likelihood of  
11 success on the merits. Many of the issues in this case  
12 involve first impression interpretations of the  
13 Telecommunications Act of 1996, 42 U.S.C. § 222. Nor have  
14 plaintiffs demonstrated that the balance of hardships favors  
15 granting a TRO.

16 The Court therefore finds that a TRO is not warranted.  
17 Instead, the Court will set a briefing schedule for a hearing  
18 on plaintiffs' request for a preliminary injunction, in order  
19 to allow the parties to fully brief the request for injunctive  
20 relief pending resolution of this action. Accordingly,

21 IT IS HEREBY ORDERED THAT the plaintiffs' application for  
22 a TRO is DENIED.

23 IT IS FURTHER ORDERED THAT a hearing on plaintiffs'  
24 motion for preliminary injunction shall be held on July 2,  
25 1996.

26 / / / /

27 / / / /

28 / / / /

1 IT IS FURTHER ORDERED THAT plaintiffs shall file and  
2 serve a memorandum of points and authorities in support of  
3 their request for a preliminary injunction by no later than  
4 May 28, 1996.

5 IT IS FURTHER ORDERED THAT defendants shall file and  
6 serve their opposition by no later than June 18, 1996.

7 IT IS FURTHER ORDERED THAT plaintiffs shall file and  
8 serve their reply by no later than June 25, 1996.

9 IT IS SO ORDERED.

10 Dated: May 17, 1996

11   
12 SAUNDRA BROWN ARMSTRONG  
13 United States District Judge  
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**FILED**

**MAY 28 1996**

**RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**ATT COMMUNICATIONS OF  
CALIFORNIA, INC. and  
MCI TELECOMMUNICATIONS  
CORPORATION,**

**Plaintiffs,**

**vs.**

**PACIFIC BELL, ET. AL.**

**Defendant.**

**SPRINT COMMUNICATIONS  
COMPANY L.P.**

**Plaintiffs,**

**vs.**

**PACIFIC BELL, ET. AL.**

**Defendant.**

**C96- 1691 SBA (MEJ)**

**ORDER DENYING PLAINTIFFS'  
EXPEDITED MOTION FOR  
DISCOVERY.**

**Related Case C96- 1692 SBA (MEJ)**

On May 21, 1996, Plaintiffs in the above entitled actions filed an Ex Parte Application for Order Permitting Expedited Discovery And Modification of Briefing Schedule. On May 24, 1996, the Honorable Sandra Brown Armstrong granted in part Plaintiff's ex parte motion, and ordered that (1) Plaintiff's Application for Preliminary Injunction be filed by June 4, 1996; (2) all other dates set by the Court on May 14, 1996, remained in effect; and (3) referred Plaintiffs' request for expedited discovery to Magistrate Judge James.

Plaintiffs' request that the Court allow Plaintiff to conduct ten (10) depositions, each consisting of one-half day and order subpoenas for limited production of relevant, requested documents in the deponents possession, to be produced not less than 24-hours prior to each deposition.

**EXHIBIT B**

1 Having considered the moving papers submitted by Plaintiff, Defendants opposition  
2 papers, statutory and case law authority, the Court finds that Plaintiffs' need to properly prepare  
3 the application for the preliminary injunction by the June 4, 1996 deadline, does not meet the  
4 "urgent need" requirement, as set forth by Stanley v. University of Southern California, 13 F.3d  
5 1313, 1326 (9th Cir. 1994).

6 Furthermore, the urgency asserted by Plaintiffs is the result of Plaintiffs' own action.  
7 The Court notes that the preliminary injunction hearing is scheduled to be held on July 2, 1996.  
8 This date was assigned in accordance with Civil L. R. 7-2, which requires that a motion is  
9 calandared 35 days after service of the motion. Plaintiffs' filed the motion for a temporary  
10 restraining order on May 7, 1996, when they filed the complaint. In its order of May 14, 1996,  
11 the District Court calandared the application for preliminary injunction accordingly.


12 Moreover, Plaintiffs' moving papers fail to explain to this Court how the discovery  
13 directly pertains to the issues relevant to the preliminary injunction.

14 Finally, the Court finds that in the balancing of equities, the discovery requested by  
15 Plaintiffs is much too broad, too vague, and unduly burdensome on Defendant at this juncture  
16 of the litigation with no hardships weighing in Plaintiffs' favor.

17 For the reasons stated above, the Court HEREBY DENIES Plaintiffs' request for  
18 expedited discovery.

19  
20 IT IS SO ORDERED.

21 DATED: May 28, 1996

22   
23 MARIA-ELENA JAMES  
24 United States Magistrate Judge  
25  
26  
27  
28

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5 Attorneys for Defendants  
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6 PACIFIC BELL EXTRAS, and  
PACIFIC BELL COMMUNICATIONS  
7  
8  
9

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

11	AT&T COMMUNICATIONS OF	)	CASE NO. C 96-1691 SBA
	CALIFORNIA, INC., a California	)	
12	corporation, and MCI	)	
	TELECOMMUNICATIONS	)	DECLARATION OF LYNNE ELIZONDO..
13	CORPORATION, a Delaware	)	IN SUPPORT OF DEFENDANTS PACIFIC
	corporation,	)	BELL, PACIFIC TELESIS GROUP,
14		)	PACIFIC BELL EXTRAS AND PACIFIC
	Plaintiffs,	)	BELL COMMUNICATIONS' OPPOSITION
15		)	TO AT&T'S, MCI'S AND SPRINT'S
	vs.	)	APPLICATION FOR A TEMPORARY
16		)	<u>RESTRAINING ORDER</u>
	PACIFIC BELL, a California	)	
17	corporation; PACIFIC TELESIS	)	DATE: TO BE DETERMINED
	GROUP, a Nevada corporation;	)	TIME: TO BE DETERMINED
18	PACIFIC BELL EXTRAS, a	)	PLACE: JUDGE ARMSTRONG'S
	California corporation; and	)	COURTROOM
19	PACIFIC BELL COMMUNICATIONS, a)	)	
	California corporation,	)	
20		)	
	Defendants.	)	
21		)	

22  
23 I, LYNNE ELIZONDO, declare:

24 1. I am presently employed by Pacific Bell as a Product  
25 Manager in the Billing Solutions organization. I make this  
26 declaration in support of defendants Pacific Bell, Pacific  
27 Telesis Group, Pacific Bell Extras and Pacific Bell  
28 Communications' opposition to AT&T's, MCI's and Sprint's

ORIGINAL  
FILED

MAY 10 1996

RICHARD W. BROWN  
CLERK OF COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 application for a temporary restraining order. I have personal  
2 knowledge of the facts stated in this declaration, except those  
3 matters stated on information and belief and, if called, could  
4 competently testify to them.

5 2. I have worked in Pacific Bell's third party billing  
6 organization for seven years as a product manager. During this  
7 time I have been involved with the majority of Pacific Bell's  
8 third party billing products and services, including Pacific  
9 Bell's message ready billing platform and the development of  
10 Pacific Bell's account ready platforms for AT&T, MCI and Sprint.  
11 I am also familiar with the process by which Pacific Bell  
12 purchases the accounts receivable of third party billing  
13 customers and Pacific Bell's collection procedures.

14 3. In this declaration I will describe the process that  
15 Pacific Bell utilizes to provide billing services to third party  
16 billing customers, including AT&T, MCI and Sprint.

17 4. Pacific Bell provides telecommunication services in  
18 California for which monthly bills are prepared and mailed to end  
19 user customers. These bills identify the Pacific Bell services  
20 utilized by the end user customer during the preceding month and  
21 the corresponding charges. These charges ("Lump Sum") are  
22 totaled on a summary page in the bill. The end user customer  
23 then has a specific time period in which to pay this Lump Sum  
24 figure. Should the end user customer fail to pay the lump sum in  
25 a timely manner, Pacific Bell has the right to take prescribed  
26 collection steps up to and including the disconnection of the end  
27 user customer's local telephone service and referral of the  
28 unpaid balance to a collection entity. The time period for



1 payment of an end user customer's bill and Pacific Bell's  
2 collection options are set forth in Pacific Bell's exchange  
3 tariff (Schedule Cal.P.U.C. No. A2) which has been approved by  
4 the California Public Utilities Commission ("CPUC").

5       5. In addition to charges for Pacific Bell's services,  
6 Pacific Bell also bills for telecommunication services provided  
7 by third parties. The types of telecommunication services that  
8 Pacific Bell bills on behalf of third parties are long distance,  
9 local toll, faxes, telephone answering, paging, videotex, voice  
10 messaging, alarm, value added networks, database companies,  
11 electronic data interchange, and electronic mail. The terms  
12 under which Pacific Bell provides billing are set forth in  
13 billing tariffs (Schedule Cal.P.U.C. No. 175T, Sections 8 and  
14 12) for services originating and terminating within California  
15 (e.g., a call from San Francisco to Los Angeles) and in separate  
16 agreements between Pacific Bell and the billing customer for  
17 services that originate and/or terminate outside of California  
18 (e.g., a call from San Francisco to New York).

19       6. Pacific Bell currently operates two basic billing  
20 systems through which charges for third party services are  
21 billed. In the account ready environment, Pacific Bell maintains  
22 three distinct billing platforms. One each for AT&T, MCI and  
23 Sprint. The services are provided by Pacific Bell under  
24 customized tariffs for intrastate services and under separate  
25 agreements for interstate services. The relevant agreements were  
26 correctly referenced by the moving parties in the Declarations of  
27 Bruce Banco (§ 14), Dan Arnett (§ 2) and Donna Morrison (§ 14).  
28 In summary, these platforms enable Pacific Bell to receive and

1 process billing data from the three carriers. The carriers send  
2 the billing data for an end user customer just once during the  
3 month. This occurs several days before the billing date for the  
4 specific end user customer. The billing data is sent in a unique  
5 format which required the creation of a unique receiving platform  
6 for Pacific Bell. Once the data is received and initially  
7 processed by Pacific Bell, the charges are funneled into Pacific  
8 Bell's established billing stream for placement on the end user  
9 customer's bill.

10       7. The process by which billing data received from the  
11 carriers is placed on an integrated Pacific Bell bill is very  
12 complex. The following are merely a few of the steps in the  
13 process. At the time the billing data is received, Pacific Bell  
14 performs control functions and provides related reports to ensure  
15 data integrity and to prevent duplicate billing. Pacific Bell  
16 then edits the incoming data to ensure compliance with CPUC rules  
17 and regulations such as checking for services that are too old to  
18 bill and that the dates of the service fall within valid service  
19 dates for the end user customer's account (e.g., a charge cannot  
20 be for service rendered after the end user customer's  
21 responsibility for the service has ceased). In addition, Pacific  
22 Bell edits to ensure that data is for a valid working account.  
23 The failure of any of these edits causes Pacific Bell to assign  
24 specific error codes to the relevant data and to develop reports  
25 for use by the involved carrier. The error codes enable the  
26 carrier to take corrective action on the rejected data but also  
27 to check their own process to avoid ongoing problems. Data that  
28 pass Pacific Bell's initial edits are then checked to ensure that

1 the telephone number the carrier has identified as being correct  
2 is in fact the correct billing number for the account. This is  
3 necessary because carriers associate their data with the end user  
4 customer's working telephone number which may or may not be the  
5 actual billing telephone number for the account. Pacific Bell  
6 will guide the data, as needed, to the correct billing telephone  
7 number.

8       8. Once the data is guided to the correct billing number,  
9 the data is held within the system until it is pulled for  
10 placement on the end user customer's bill. The carrier billing  
11 data is placed on separate pages in the bill and the total  
12 carrier charges are merged with the total charges for Pacific  
13 Bell services and the services of any other billing customers  
14 into a single aggregate figure representing the Lump Sum due  
15 Pacific Bell. Insofar as the Lump Sum is an aggregate of many  
16 charges from a variety of sources, it is not possible in my view  
17 for anyone receiving the figure to discern the identity of those  
18 billing customers whose charges are included, the specific dollar  
19 amount of long distance charges, if any, which may be included,  
20 or anything else discrete or specific about the components of  
21 which the Lump Sum consists.

22       9. Pacific Bell's billing services are attractive to  
23 billing customers for several reasons, one of the most important  
24 being that Pacific Bell's collection percentage (e.g., the  
25 percentage of billed dollars collected from end user customers)  
26 is very competitive with other billing vendors. Pacific Bell's  
27 collection results are due in large part to Pacific Bell's  
28 ability to deny local telephone service to end user customers who

1 fail to pay Pacific Bell's Lump Sum figure. It is the inclusion  
2 of a billing customer's charges in Pacific Bell's Lump Sum that  
3 is important to billing customers. In other words it is of  
4 critical importance that the nonpayment of the billing customer's  
5 charges be susceptible to the denial of telephone service by  
6 Pacific Bell. This can only occur if the billing customer's  
7 charges are included in Pacific Bell's Lump Sum. Pacific Bell's  
8 billing tariff and billing agreements allow this inclusion  
9 because Pacific Bell actually purchases the accounts receivable  
10 of its billing customer (e.g., the charges due the billing  
11 customer by the end user customer). After the billing data  
12 passes the upfront edits described in Paragraph 7, above, Pacific  
13 Bell's obligation to purchase the receivable attaches and a  
14 payment date and payment amount are calculated. At this point it  
15 is Pacific Bell, not the billing customer, who is due payment by  
16 the end user customer. Accordingly, the charges associated with  
17 the billing customer's services are included in Pacific Bell's  
18 Lump Sum figure on the next bill. Pacific Bell collects against  
19 the Lump Sum, applies all payments received against the Lump Sum,  
20 and monitors payment history against the Lump Sum. Billing  
21 customers have no right to know the Lump Sum, are not informed of  
22 the figure, and are not informed of the payment history of an end  
23 user customer. The Lump Sum figure is known only to Pacific Bell  
24 and the end user customer.

25 10. The second basic billing system that Pacific Bell  
26 offers to billing customers is the message ready platform. AT&T,  
27 MCI and Sprint all bill through the message ready platform as do  
28 the remainder of Pacific's billing customers. The message ready

1 platform processes the billing data of all billing customers in  
2 similar fashion. Pacific Bell receives billing data for the  
3 specific end user customer all through the month rather than  
4 immediately preceding the bill date of the end user customer.  
5 The functions performed upon receipt of the billing data are  
6 similar to those described in Paragraphs 7, 8 and 9, above, but  
7 also include the calculation of taxes and surcharges and the  
8 investigation of individual charges that are unbillable to  
9 determine how the charges might be properly billed.

10 I declare under penalty of perjury under the laws of  
11 the United States of America that the foregoing is true and  
12 correct.

13 DATED: May 10, 1996.

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16 LYNNE ELIZONDO  
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C 96-1691 SBA

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FILED

MAY 10 1996

RICHARD W. HEWITT  
CLERK OF COURT  
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Defendants  
PACIFIC BELL, PACIFIC TELESIS GROUP,  
PACIFIC BELL EXTRAS, and  
PACIFIC BELL COMMUNICATIONS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AT&T COMMUNICATIONS OF  
CALIFORNIA, INC., a California  
corporation, and MCI  
TELECOMMUNICATIONS  
CORPORATION, a Delaware  
corporation,

Plaintiffs,

vs.

PACIFIC BELL, a California  
corporation; PACIFIC TELESIS  
GROUP, a Nevada corporation;  
PACIFIC BELL EXTRAS, a  
California corporation; and  
PACIFIC BELL COMMUNICATIONS, a  
California corporation,

Defendants

CASE NO. C 96-1691 SBA

DECLARATION OF JAN HEWITT IN  
SUPPORT OF DEFENDANTS' (PACIFIC  
BELL, ET AL.) OPPOSITION TO  
ATT'S AND MCI'S APPLICATION FOR  
A TEMPORARY RESTRAINING ORDER

DATE: TO BE DETERMINED

TIME: TO BE DETERMINED

PLACE: JUDGE ARMSTRONG'S  
COURTROOM

I, Jan Hewitt, declare:

1. I am presently employed by Pacific Bell ("Pacific Bell") and, as such, am on loan to its affiliate, PB Extras ("PB Extras"). My position there is Project Manager. I submit this

1.

J. Hewitt Decl. Opposition  
TRO Application  
C 96-1691 SBA

EXHIBIT D

1 declaration in support of defendants' (Pacific Bell et al) opposition to AT&T and MCI's  
2 (collectively the "Plaintiffs") application for a Temporary Restraining Order. The facts  
3 stated herein are true of my personal knowledge, or based on business records kept in the  
4 course of regularly conducted business activity at Pacific Bell or PB Extras, respectively,  
5 and it is the normal business practice of Pacific Bell or PB Extras, respectively, to make  
6 these records. I have personal knowledge of the facts stated in this declaration, except  
7 those matters stated on information and belief, and if called, could and would testify  
8 competently to them.  
9

10 2. I came to Pacific Bell in 1985, where I have been for the last eleven years, in various  
11 Marketing positions.  
12

13 My first position was as an Analyst for the Marketing Intelligence Center, a research and  
14 information group supporting market strategy, planning and competitive research groups at  
15 Pacific Bell. I was promoted to Manager of the Center and developed specialized database  
16 services to provide access to both internal and external information sources relevant to  
17 telecommunications.  
18

19 My next assignment in 1989 was in the Market Research group, where I worked on a variety of  
20 research projects for the Residence telecommunications market.

21 From there I moved to the Consumer Marketing group, where I developed market plans for the  
22 residential market.  
23

24 My next assignment in 1991 was to launch a loyalty program for residential customers called  
25 "California Gold". I managed the program until it was discontinued in January 1996. In 1994  
26 I took on the responsibility for the development and launch of the Pacific Bell Savings Card, a  
27 Co-branded, combined credit and calling card offered to Pacific Bell residence customers that  
28

1 customers that earns them dollars off their Pacific Bell phone bill. In 1995 I took on project  
2 management for the new Pacific Bell Awards program launched in March 1996.

- 3 3. In this declaration, I will describe the organization and function of the Pacific Bell Awards  
4 ("Awards") program, the program's promotion and enrollment process, the fact that the  
5 program does not employ deceptive advertising, and the fact the program is not harmful to the  
6 Plaintiffs.  
7

8 Pacific Bell Awards: Background

- 9 4. Pacific Bell Awards was launched March 31, 1996 through a television advertisement. The  
10 purpose of Awards is to retain Pacific Bell residential customers, to thank them for their  
11 loyalty to Pacific Bell, and to provide a vehicle to encourage customers to stay with Pacific  
12 Bell in the advent of competitive offerings in the market of local telephone exchange service.  
13 Pacific Bell Awards is funded, promoted and administered by Pacific Bell Extras, a wholly-  
14 owned subsidiary of Pacific Telesis group.  
15  
16 5. Any Pacific Bell residential customer is eligible to enroll in the program.  
17  
18 6. Enrollment is voluntary and at no cost to the customer. Once enrolled, the customer is awarded  
19 10 points for every dollar each month his or her total Pacific Bell-rendered telephone bill is  
20 \$50.00 or more.  
21  
22 7. Customers redeem their points to obtain an Awards Certificate reflecting a discount off the  
23 price of goods or services offered by a third party program participant ("program  
24 participants"). Customers order the Awards Certificate by calling a toll-free 800 number. The  
25 Awards Certificates are redeemed directly by the customer (i) physically in person, at the retail  
26 location of certain program participants, or (ii) by telephone when ordering goods or services  
27 offered by other program participants. To the extent program participants require information  
28



1 of a customer to complete an order, they will obtain such information directly from the  
2 customer. (See Paragraph #16 below.)

3 8. The structure and scope of the program was designed after Pacific Bell held a series of  
4 consumer focus groups which identified the following objectives; (i) the program had to be  
5 easy to use and easy to understand; (ii) the program must provide a variety of awards, allowing  
6 customers to quickly obtain rewards for a lesser number of points or save up for more valuable  
7 awards. The focus groups also identified the consumer desire for awards which give discounts  
8 off popular consumer merchandise and services, such as travel, rental cars or hotels. This  
9 program is like a credit card award program, where members are rewarded for any and all  
10 charges appearing on their bill, regardless of the identity of the vendor making the sale. The  
11 program participants also represent a range of service and product providers, and are not  
12 limited to one industry.  
13  
14

#### 15 Program Promotion and Enrollment

16 9. Customers were notified of the Awards program two ways: through a direct mail piece, and  
17 through mass media (television and newspaper advertisements). Plaintiffs' declaration  
18 attached as exhibits, copies of the print advertisements.  
19

20 10. Customers receiving the direct mail piece or the newspaper advertisements were given the  
21 option to (i) call a toll-free ("800") number to enroll by telephone; (ii) mail in their signed  
22 enrollment and consent form, or (iii) fax in their signed enrollment and consent form received  
23 with the direct mail piece.  
24

25 11. The 800 numbers are staffed by outside consultants with experience in operating customer  
26 service centers. Customers enroll by giving their telephone account number. Telephone  
27 enrollees will receive an enrollment and consent form to sign as part of their initial program  
28